

THE STATE OF NEW HAMPSHIRE



INCAPACITATED ADULT FATALITY REVIEW COMMITTEE



*"Do not forget the hands of the aged; they have touched much of life
and have become sensitive and sympathetic."*

-- Anonymous

FIRST ANNUAL REPORT

March 2009

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CHAIR REPORT AND ACKNOWLEDGMENTS

The Incapacitated Adult Fatality Review Committee (IAFRC) has completed its inaugural year of reviewing certain deaths of New Hampshire's elderly and incapacitated adults. I would like to thank Attorney General Kelly Ayotte and the members of the IAFRC executive committee for affording me the privilege of serving as Chair to such a distinguished and selfless group of individuals who have agreed to volunteer their valuable time to come together to protect and improve the lives of New Hampshire's elderly and incapacitated adults.

On January 1, 2008, RSA 21-M: 16 established and administratively attached the IAFRC to the New Hampshire Department of Justice. During this first year, the IAFRC executive committee worked diligently to accomplish the mandates set forth by the legislature. The IAFRC modeled itself after New Hampshire's existing Child Abuse and Domestic Violence Fatality Review Committees and incorporated other aspects of similar elder death review teams from across the country. The mission statement, objectives, and case review protocol contained in this report are the product of the committees' hard work and continued diligence throughout 2008.

Each year, over 2,500 cases of abuse, neglect, self-neglect and financial exploitation of elderly and incapacitated adults are reported to the New Hampshire Bureau of Elderly and Adult Services. Studies suggest, however, that such occurrences are vastly underreported with only one in fourteen cases of abuse and neglect ever coming to the attention of authorities. Victims often suffer in silence and many die from conditions that could have been prevented.

By 2010, approximately one-third of New Hampshire's population will be 50 or older. The challenge for New Hampshire's communities will be to develop and expand programs and resources to meet the needs of its elderly and incapacitated residents. Through careful and considerate review of certain deaths of elderly and incapacitated adults, the IAFRC seeks to improve the lives of the state's most vulnerable members by recommending policies, practices, and services that will promote collaboration and reduce preventable fatalities.

The residents of New Hampshire should be encouraged by the mission and efforts of the IAFRC. It is my sincere hope that the continued work of the IAFRC will give a voice to New Hampshire's elderly and incapacitated adults so that they will no longer be forced to suffer in silence.



Tracy M. Culberson, Esq.
Chair

INCAPACITATED ADULT FATALITY REVIEW **COMMITTEE**

MISSION STATEMENT

To reduce incapacitated adult fatalities through systemic multidisciplinary review of incapacitated adult fatalities, evaluation of practices, policies, relevant data and trends and through recommendations for changes in law, policy and practice.

We recognize the responsibility for responding to, and preventing, elder and incapacitated adult abuse and neglect fatalities, lies within the community, and not with any single agency or entity. We further recognize that a careful examination of the fatalities provides the opportunity to develop education, prevention, service delivery, management, quality assurance strategies and, if necessary, prosecution strategies that will lead to improved coordination of services for elder and incapacitated adults and their families.

OBJECTIVES

1. Determine and report on trends and patterns of incapacitated adult deaths in New Hampshire.
2. Recommend policies, practices, and services that will promote collaboration among service providers for, and reduce preventable fatalities among, incapacitated adults.
3. Evaluate policies, practices, intervention and responses to fatalities among incapacitated adults and offer recommendations for any improvements in those interventions and responses.
4. Evaluate and report on high risk factors, current practices, gaps in systematic responses, and barriers to safety and well being for incapacitated adults in New Hampshire.
5. Recommend improvements in the sources of data relative to preventing fatalities among incapacitated adults.
6. Educate the public, policy makers, and budget authorities about fatalities involving covered incapacitated adults.
7. Identify and evaluate the prevalence of risk factors for preventable deaths in the population of incapacitated adults.
8. Development and dissemination of an annual report to state officials describing any trends and patterns of deaths or serious injuries or risk factors, together with any recommendations for changes in law, policy, and practice that will prevent deaths and related serious occurrences and special reports when doing so is necessary to alert authorities or the public to the need for prompt corrective action.

ELDERLY AND INCAPACITATED ADULT
FATALITY REVIEW COMMITTEE
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I. INTRODUCTION

The abuse of elderly and incapacitated adults is a serious and growing problem, both locally and nationally. However, the responses of the justice, health, and social services systems to elder and incapacitated adult abuse lag far behind their responses to the similar problems of child abuse or domestic violence. Fatality review teams for child abuse and domestic violence have had an impact in improving systems' responses to the victims of those similar forms of abuse. Yet, elder and incapacitated adult fatality review teams are only just starting to develop.¹

A fatality review committee is a group of professionals from many different organizations, agencies and branches of government that convenes periodically to review cases where an elderly or incapacitated adult has died. The theory underlying the fatality review process is that if we are able to better understand why and how a death occurred, we can learn important lessons to help prevent future deaths. The review process affords the Committee with the opportunity to develop recommendations that are intended to improve the statewide coordination of services for elder and incapacitated adults and their families.

¹ Reprinted with the permission of the American Bar Association Commission on Law and Aging publication entitled *Elder Abuse Fatality Review Teams: A Replication Manual*.

II. HISTORICAL BACKGROUND

In 2007, House Bill 862-FN, sponsored by State Representatives Schulze, MacKay, Donovan, Emerson, French and Fuller Clark, was introduced to establish a committee to study the incidence and causes of deaths of incapacitated adults. (See Appendix A). The purpose of the proposed committee was, among other things, to recommend policies, practices, and services that will promote collaboration and reduce preventable fatalities among incapacitated adults.

On January 1, 2008, RSA 21-M: 16 took effect thus creating the Incapacitated Adult Fatality Review Committee. The Committee, which is administratively attached to the Department of Justice, exemplifies New Hampshire's strong tradition of multi-disciplinary cooperation and its commitment to improving the State's ability to protect its most vulnerable citizens. The statute authorized the attorney general to appoint members to the committee from the health care field, organizations with expertise in services provided to incapacitated adults, law enforcement, organizations or individuals who advocate for or provide legal representation for incapacitated adults, and other members as the attorney general determines will assist the committee in fulfilling its objectives.

The authority and objectives of the Committee are defined by statute and incorporated into the Committee's mission statement. The meetings and records of the Committee are exempt from the provisions of RSA 91-A (Right-to-Know Law). Committee members sign a confidentiality agreement that prohibits any unauthorized dissemination of information beyond the purpose of the review process as a condition of membership.

At its first meeting in March 2008, the IAFRC executive committee began the difficult task of drafting a mission statement, Committee objectives, interagency and confidentiality agreements, and a procedure for identifying specific cases to review. Additionally, the executive committee identified more than 25 individuals from varied disciplines as potential review committee members. Once identified, those individuals were appointed by Attorney General Kelly Ayotte to serve on the Committee.

On June 27, 2008 the full committee met for the first time. The meeting afforded those who serve the needs of New Hampshire's elderly and incapacitated adult population the opportunity to meet and interact with one another and become familiar with the mission and purpose of a fatality review committee. The full committee would meet again in August to conduct its first review of a death of an elderly incapacitated person and again in October to conduct its second review.

III. FATALITY REVIEW

Membership

The Committee's membership is comprised of individuals representing the health care field, organizations with expertise in services provided to incapacitated adults, law enforcement, organizations or individuals who advocate for or provide legal representation for incapacitated adults, and such other members as the attorney general determines will assist the committee in fulfilling its objectives. Committee members serve at the pleasure of the attorney general for three-year terms.

A review of the membership list, included at the beginning of this report, reflects representation from the following: Probate Court, law enforcement, victim services (through both the Attorney General's Office and Coalition Against Domestic and Sexual Violence), health care (medical and mental health), Department of Health and Human Services, Bureau of Elderly and Adult Services and Ombudsman, attorneys, disability rights advocates, emergency management services, home care providers, public guardians, and members of public and private organizations that advocate for, and serve the needs of, elderly and incapacitated adults. These members volunteer their time to come together every other month to review deaths with the hope of improving the State's ability to meet the needs of its most vulnerable citizens.

Confidentiality Agreement

Pursuant to RSA 21-M:16, VIII, the meetings and records of the committee are exempt from the provisions of RSA 91-A ("Right-To-Know-Law"). Because certain information that is shared at committee meetings is confidential, all members of the committee must sign a confidentiality agreement that prohibits any unauthorized dissemination of information beyond the purpose of the review process as a condition of membership. (See Appendix B). In addition to individual confidentiality agreements, an Interagency Agreement has been signed by the heads of the New Hampshire Department of Justice, the New Hampshire Department of Health and Human Services, and the New Hampshire Department of Safety. (See Appendix C).

"A test of a people is how it behaves toward the old...the affection and care for the old, the incurable, the helpless are the true gold mines of a culture."

- Abraham Heschel

Case Review Protocol

1. The IAFRC will review data regarding certain deaths of New Hampshire elderly and incapacitated adults as defined in NH RSA 21-M:16, IV.
2. The Committee's review of a case shall not be initiated until such time as any related criminal action has been finally adjudicated at the trial court level.
3. Comprehensive, multi-disciplinary review of specific cases may be initiated by the Department of Justice, the Department of Health and Human Services, the Department of Safety, or by any member of the Incapacitated Adult Fatality Review Committee (IAFRC).
4. Once the IAFRC Executive Committee identifies a case for review, the IAFRC Chairperson or Staff Assistant will send case information to IAFRC members in a sealed envelope marked "Confidential" prior to the scheduling of the case for review at an IAFRC meeting. The envelope may contain, among other things, the following information: name of victim and perpetrator (if applicable), name of facility or address of residence where death occurred, name of caregiver, deceased's date of birth, driver's license number and social security number.
5. The IAFRC members should gather necessary information pertaining to the specific case and report this information and their organization's involvement or non-involvement during the IAFRC meeting.
6. At the IAFRC meeting, members will review the facts and information gathered for each case, and identify any policies and procedures that could be strengthened or implemented, or measures that could have been taken to prevent the death from occurring.
7. The Committee shall make an annual report, on or before the first day of November each year to the speaker of the House of Representatives, the President of the Senate, and the Governor describing any trends and patterns of deaths or serious injury or risk factors, together with any recommendations for changes in law, policy, and practice that will prevent deaths and related serious occurrences. The Committee may also issue special reports when doing so is necessary to alert authorities or the public to the need for prompt corrective action.
8. Each Committee member representing a discipline or agency will designate an alternate member from their discipline or agency and will ensure that one member will be present at every meeting.
9. Confidentiality agreements are required of any individual participating in any IAFRC meeting.

10. Written materials generated from the meeting such as case summaries or notes pertaining to the case will be collected by the Staff Assistant or the chair and destroyed. Use of recording equipment is not allowed.
11. The IAFRC Executive Committee, comprised of members of the IAFRC, assesses case information to be reviewed by the IAFRC and performs other business as needed.
12. The IAFRC will convene every other month at times published by the Executive Committee.
13. The Committee may invite non-member guests to observe and participate in a review. Invited guests shall be required to sign a confidentiality agreement.

Annual Report

The committee makes an annual report on or before the first day of November each year to the speaker of the house of representatives, the president of the senate, and the governor describing any trends and patterns of deaths or serious injuries or risk factors, together with any recommendations for changes in law, policy, and practice that will prevent deaths and related serious occurrences. The committee may also issue special reports when doing so is necessary to alert authorities or the public to the need for prompt corrective action. Due to the various challenges associated with a newly formed committee, the first annual report is respectfully submitted after November first.

IV. 2008 CASE REVIEWS AND RECOMMENDATIONS

The Committee was able to review two cases this year. The first case involved neglect of an elderly person and the second case was a murder suicide.

Despite its best efforts and intentions, the committee was unable to complete the full recommendation process in time for inclusion with this report. The two cases reviewed resulted in a significant amount of preliminary discussions about possible recommendations. The committee will dedicate a future meeting to completing the recommendation process. Any recommendations made will be included in the second annual report due on November 1, 2009.

V. CONCLUSION

The work of the New Hampshire Incapacitated Adult Fatality Review Committee represents an important and significant step forward in the State's effort to reduce preventable deaths of its most vulnerable citizens. We hope that our recommendations will be received and considered by those organizations and agencies that are dedicated to preserving the rights and general welfare of New Hampshire's elderly and incapacitated adult population.

APPENDIX A:
STATUTORY AUTHORITY

TITLE I
THE STATE AND ITS GOVERNMENT
CHAPTER 21-M
DEPARTMENT OF JUSTICE

[RSA 21-M:16 effective January 1, 2008.]

21-M:16 Incapacitated Adult Fatality Review Committee Established. –

I. There is hereby established the incapacitated adult fatality review committee (committee) which shall be administratively attached, under RSA 21-G:10, to the department of justice.

II. The attorney general shall appoint members and alternate members to the committee. The members of the committee shall include individuals representing the health care field, organizations with expertise in services provided to incapacitated adults, law enforcement, organizations or individuals who advocate for or provide legal representation for incapacitated adults, and such other members as the attorney general determines will assist the committee in fulfilling its objectives. The terms of the members shall be 3 years; provided, that the initial members shall be appointed to staggered terms. Members shall serve at the pleasure of the attorney general.

III. The committee shall:

(a) Recommend policies, practices, and services that will promote collaboration among service providers for, and reduce preventable fatalities among, incapacitated adults.

(b) Evaluate policies, practices, interventions and responses to fatalities among incapacitated adults and offer recommendations for any improvements in those interventions and responses.

(c) Determine and report on trends and patterns of incapacitated adult deaths in New Hampshire.

(d) Evaluate and report on high risk factors, current practices, gaps in systematic responses, and barriers to safety and well-being for incapacitated adults in New Hampshire.

(e) Educate the public, policy makers, and budget authorities about fatalities involving covered incapacitated adults.

(f) Recommend improvements in the sources of data relative to preventing fatalities among incapacitated adults.

(g) Identify and evaluate the prevalence of risk factors for preventable deaths in the population of incapacitated adults.

IV. For the purposes of this section, "incapacitated adult" means:

(a) Adults who are clients of the area agency system pursuant to RSA 171-A or RSA 137-K at the time of the person's death or within one year of the person's death.

(b) Adults who are patients at the New Hampshire hospital or any other designated receiving facility or whose death occurs within 90 days following discharge, who are on conditional discharge, or who are applicants for or clients of the community mental health center system under RSA 135-C:13 and RSA 135-C:14 at the time of death or within one year of death.

(c) Adults who are receiving services pursuant to RSA 161-E and RSA 161-I.

(d) Adults who are participants in programs or residents of facilities specified in RSA 151:2, I(a), (b), (d), (e), or (f), or RSA 161-J, or within 90 days of discharge from such a facility.

(e) Adults who were the reported victims of abuse, neglect, self-neglect, or exploitation which was reported to the department of health and human services pursuant to RSA 161-F:46, where the report was determined to be unfounded and was filed within 6 months prior to death, where the report was determined to be founded and was filed within 3 years prior to death, or where the report was pending at the time of death.

(f) Adults who were in need of any of the services defined in subparagraphs (a)-(e) at the time of their death.

V. The committee shall adopt a protocol defining which deaths shall be reported to the committee and subject to review, and which deaths may be screened out for review, such as deaths where the cause is natural, expected, and non-preventable. The committee shall also determine whether it is appropriate to have different types of review, such as comprehensive or more limited reviews depending on the incident under review or the purpose of the review. The protocol shall also define the character of the contents of the committee's annual report, required under paragraph VII.

VI. The committee's review of a case shall not be initiated until such time as any related criminal action has been finally adjudicated at the trial court level. Records of the committee, including testimony by persons participating in or appearing before the committee and deliberations by committee members relating to the review of any death, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. However, information, documents, or records otherwise available from original sources shall not be construed as immune from discovery from the original sources or used in any such civil or administrative action merely because they were presented to the committee, and any person who appears before the committee or supplies information as part of a committee review, or who is a member of the committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her statements before the committee, participation as a member of the committee, or opinions formed by him or her or any other member of the committee, as a result of participation in a review conducted by the committee.

VII. The committee shall make an annual report, on or before the first day of November each year, beginning on November 1, 2008, to the speaker of the house of representatives, the president of the senate, and the governor describing any trends and patterns of deaths or serious injuries or risk factors, together with any recommendations for changes in law, policy, and practice that will prevent deaths and related serious occurrences. The committee may also issue special reports when doing so is necessary to alert authorities or the public to the need for prompt corrective action.

VIII. The meetings and records of the committee shall be exempt from the provisions of RSA 91-A. The committee's reports shall not include any private or privileged information. Members of the committee may be required to sign a confidentiality agreement that prohibits any unauthorized dissemination of information beyond the purpose of the review process as a condition of membership.

Source. 2007, 256:1, eff. Jan. 1, 2008.

APPENDIX B:
CONFIDENTIALITY AGREEMENT

**NEW HAMPSHIRE INCAPACITATED ADULT FATALITY REVIEW
COMMITTEE**

The purpose of the New Hampshire Incapacitated Adult Fatality Review Committee is to conduct a full examination of incapacitated adult fatalities. In order to assure a coordinated response that fully addresses all systemic concerns surrounding incapacitated adult fatality cases, the New Hampshire Incapacitated Adult Fatality Review Committee must have access to all existing records on each case. This includes social service reports, court documents, police records, autopsy reports, mental health records, hospital or medical related data and any other information that may have a bearing on the involved incapacitated adult, family and perpetrator, if applicable.

Records of the committee, including testimony by persons participating in or appearing before the committee and deliberations by committee members relating to the review of any death, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. However, information, documents, or records otherwise available from original sources shall not be construed as immune from discovery from the original sources or used in any such civil or administrative action merely because they were presented to the committee, and any person who appears before the committee or supplies information as part of a committee review, or who is a member of the committee, may not be prevented from testifying as to matters within his or her knowledge, but such witness may not be asked about his or her statements before the committee, participation as a member of the committee, or opinions formed by him or her or any other member of the committee, as a result of participation in a review conducted by the committee

The meetings and records of the committee shall be exempt from the provisions of RSA 91-A. The committee's reports shall not include any private or privileged information.

With this purpose in mind, I the undersigned, as a representative of:

_____ agree that all information secured in any review will remain confidential and not be used for reasons other than that which was intended. No material will be taken from the meeting with case identifying information.

Print Name: _____

Authorized Signature: _____

Witness: _____

Date: _____

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KELLY A. AYOTTE
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ORVILLE B. "BUD" FITCH II
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INTERAGENCY AGREEMENT TO ESTABLISH THE NEW HAMPSHIRE INCAPACITATED ADULT FATALITY REVIEW COMMITTEE

This cooperative agreement is made between the New Hampshire Department of Justice, the New Hampshire Department of Health and Human Services and the New Hampshire Department of Safety.

WHEREAS, the parties hereto are vested with the authority to promote and protect the public health and to provide services which improve the well-being of incapacitated adults; and

WHEREAS, under RSA 125:9 II, the Department of Health and Human Services – Division for Public Health has the statutory authority to: "Make investigations and inquiries concerning the causes of epidemics and other diseases; the source of morbidity and mortality; and the effects of localities, employment, conditions, circumstances, and the environment on the public health;" and

WHEREAS, under RSA 161-F, the Department of Health and Human Services – Bureau of Elderly and Adult Services, has the responsibility to protect the well-being of elder and incapacitated adults; and

WHEREAS, the objectives of the New Hampshire Incapacitated Adult Fatality Review Committee are, as specified by the statute, agreed to be:

- 1. Recommend policies, practices, and services that will promote collaboration among service providers for, and reduce preventable fatalities among, incapacitated adults.*
- 2. Evaluate policies, practices, interventions and responses to fatalities among incapacitated adults and offer recommendations for any improvements in those interventions and responses.*
- 3. Determine and report on trends and patterns of incapacitated adult deaths in New Hampshire.*
- 4. Evaluate and report on high risk factors, current practices, gaps in systematic responses, and barriers to safety and well-being for incapacitated adults in New Hampshire.*
- 5. Educate the public, policy makers, and budget authorities about fatalities involving covered incapacitated adults.*
- 6. Recommend improvements in the sources of data relative to preventing fatalities among incapacitated adults.*
- 7. Identify and evaluate the prevalence of risk factors for preventable deaths in the population of incapacitated adults.*
- 8. Development and dissemination of an annual report to state officials describing any trends and patterns of deaths or serious injuries or risk factors, together with any recommendations for changes*

in law, policy, and practice that will prevent deaths and related serious occurrences and special reports when doing so is necessary to alert authorities or the public to the need for prompt corrective action.

WHEREAS, all parties agree that the membership of the New Hampshire Incapacitated Fatality Review Committee needs to be comprehensive and to include at a minimum, representation from the following disciplines: law enforcement, judiciary, medical, mental health, public health, child protection services, consumer advocacy organizations, with specific membership from designated agencies to include, but not to be limited to: the Office of the Chief Medical Examiner, the New Hampshire Department of Justice, the New Hampshire Department of Safety and the New Hampshire Department of Health and Human Services; and

WHEREAS, the parties agree that meetings of the New Hampshire Incapacitated Fatality Review Committee will be held no fewer than six (6) times per year to conduct reviews of fatalities:

NOW, THEREFORE, it is hereby agreed that the following agencies will cooperate with the New Hampshire Incapacitated Adult Fatality Review Committee under the official auspices of the New Hampshire Department of Justice, subject to the renewal of this Interagency Agreement. Records of the committee, including testimony by persons participating in or appearing before the committee and deliberations by committee members relating to the review of any death, shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena, or admission into evidence in any judicial or administrative proceeding.

The meetings and records of the committee shall be exempt from the provisions of RSA 91-A. The committee's reports shall not include any private or privileged information.

All members of the New Hampshire Incapacitated Adult Fatality Review Committee will sign a confidentiality statement that prohibits any unauthorized dissemination of information beyond the purpose of the review process. The New Hampshire Incapacitated Adult Fatality Review Committee shall not create new files with specific case-identifying information. Non-identified, aggregate data will be collected by the Committee. Case identification will only be utilized in the review process in order to enlist interagency cooperation. No material may be used for reasons other than that for which it was intended. It is further understood that there may be individual cases reviewed by the Committee which will require that a particular agency be asked to take the lead in addressing a systemic or quality of care issue based on that agency's clear connection with the issue at hand.

Kelly Ayotte

Attorney General
Date 6/4/08

William A. Long

Commissioner, Health and Human Services
Date 6/9/08

B. Sullivan

Commissioner, Department of Safety
Date 6/18/08